

Opening Statement of the Honorable Ed Whitfield
Subcommittee on Energy and Power
Hearing on “EPA’s Proposed 111(d) Rule for Existing Power Plants: Legal and Cost
Issues”
March 17, 2015

(As Prepared for Delivery)

This morning our subcommittee will hold its first hearing of the year on the EPA’s proposed “Clean Power Plan.” At this point, everyone from legal scholars to state government officials to affected utilities has had opportunity to review this proposed rule. As we will learn today, many have expressed serious concerns whether EPA can move forward with the proposed rule. Given the potential adverse impacts on ratepayers, many also question whether the agency should do so.

EPA’s plan to commandeer from state control nearly every major aspect of electricity generation, distribution, and use is based on section 111(d) of the Clean Air Act. However, there is a threshold question about whether EPA has statutory authority to proceed with its Clean Power Plan at all under that provision. Even assuming authority exists; neither the language of this provision nor its decades-long implementation history suggests that it authorizes such a sweeping federal agenda. This is especially true of the agency’s attempts to regulate beyond the fence line of power plants by interfering with state decisions on matters like renewable portfolio standards and energy conservation mandates.

Equally troubling are the Constitutional issues. Federalism is a core principle in our system of government and has proven to be a key component of effective energy and environmental policy. Unfortunately, the Clean Power Plan presents an unprecedented effort to tip the federal/state balance towards federal dominance over state electricity systems. Not surprisingly, officials from more than half the states have questioned EPA’s legal authority to pursue this regulation.

At risk is the discretion states have always had over the electricity generation mix. For example, my home state of Kentucky has chosen to rely mostly on coal to provide affordable and reliable electricity for its consumers and businesses. As a result, we are fortunate to have some of the lowest electricity rates in the country. Other states have chosen their own paths as they see fit to best serve their citizens’ needs. But under the Clean Power Plan, each state’s electricity plan would have to meet EPA’s criteria for reducing carbon dioxide emissions and be approved by the agency.

Any state that does not have a plan approved by the Administrator of the EPA would be subject to a Federal plan being imposed on it. EPA has yet to tell us what this federal plan would entail, but it is unlikely to be a viable option so much as an approach to compel states to submit to EPA demands in order to get their state plans approved.

Given the Constitutional, statutory, and other legal issues surrounding the Clean Power Plan, I don’t believe it will withstand judicial scrutiny. Given the tight deadlines under the proposed rule, states will be facing a decision about whether to submit their plans and initiate costly steps towards compliance before judicial review is complete. This would be unfortunate, because whether or not the Clean Power Plan is bad law, it certainly is bad policy.

Even Administrator McCarthy has admitted that none of EPA’s climate rules would actually make a measurable difference on future temperatures. The Clean Power Plan will, however, will make a difference in many areas of the country to those who pay an electric bill.

Indeed, the very purpose of the proposed rule is to replace affordability considerations with environmental ones in each state’s electricity system. One study by NERA puts the total cost at \$366 billion through 2031 and estimates increases in electricity prices of 12 percent or more. Beyond costs, there are highly credible warnings that ratepayers would face reliability risks, which already are a concern because of

several other EPA rules targeting coal-fired generation but would get worse under the Clean Power Plan.
No wonder states are fighting back against EPA.

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